

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed November 29, 2007 ("Office Action"). Claims 1-43 are pending in the present application. Claims 25-43 are withdrawn from consideration and Claims 1-24 stand rejected.

Section 103 Rejections

Claims 1-7, and 9 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 4,758,344 to Wildenauer ("*Wildenauer*") in view of U.S. Patent No. 4,668,388 to Dibble, et al ("*Dibble*") or U.S. Patent No. 4,952,230 to Norlund ("*Norlund*") taken further in view of U.S. Patent No. 4,230,676 to Taylor, et al. ("*Taylor*"). Claim 8 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Wildenauer* in view of *Dibble* or *Norlund* and *Taylor* taken further in view of U.S. Patent 4,962,034 to Khan ("*Khan*"). Claim 10 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Wildenauer* in view of *Dibble* or *Norlund* and *Taylor* taken further in view of U.S. Patent 5,591,635 to Young, et al. ("*Young*") and U.S. Patent No. 3,973,043 to Lynn ("*Lynn*"). Claim 11 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Wildenauer* in view of *Dibble* or *Norlund* and *Taylor* taken further in view of U.S. Patent 4,317,670 to Khoroshavin, et al. ("*Khoroshavin*"). Claim 12-14, 19, 20, and 22 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Wildenauer* in view of *Dibble* or *Norlund* and *Taylor* taken further in view of Japanese Patent JP 08-245285 to Furuta ("*Furuta*"). Claim 15 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Wildenauer* in view of *Dibble* or *Norlund*, *Taylor*, and *Furuta* taken further in view of German Patent No. DE2057413 to Still ("*Still*"). Claim 16-18 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Wildenauer* in view of *Dibble* or *Norlund*, *Taylor*, and *Furuta* taken further in view of EP Patent No. EP 0 673 901 to Smit ("*Smit*"). Claim 21 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Wildenauer* in view of *Dibble* or *Norlund*, *Taylor*, and *Furuta* taken further in view of *Khan*. Claim 23 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Wildenauer* in view of *Dibble* or *Norlund*, *Taylor*, and *Furuta* taken further in view of *Young* and *Lynn*. Claim 24 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Wildenauer* in view of *Dibble* or *Norlund*, *Taylor*, and *Furuta* taken further in view of *Khoroshavin*. Applicants traverse these rejections.

Independent Claim 1 is allowable because the combination of *Wildenauer*, *Dibble* or *Norlund*, and *Taylor* fail to disclose, teach, or suggest "a pump operable to circulate water through the biomass pile by delivering water to the distribution pipe and receiving water

from the drain pipe after it has traveled through the biomass pile.” The Office Action relies upon *Wildenauer*’s pumps 22, 24, and 15 as disclosing this feature, but this is incorrect. *Wildenauer* describes pumps 22, 24, and 15 as three distinct pumps with three distinct purposes. Specifically, *Wildenauer* describes each distinct pump as follows:

- “The leaching liquid is pumped by a pump 15' through a conduit 20 into the pipes 10 in the top of the tower 1.” (Col. 6, ll. 64-6).
- “The liquid flow-off 11 from the trough 21 is supplied by a pump 22 through a conduit 23 into an intermediate tank 2.” (Col. 4, ll. 28-30).
- “A further pump 24 between the tank 2 and the bottom 25 of the solid bed reactor 3 is used for controlling the supply of the liquid flow-off 11 into the solid bed reactor 3 through a conduit 26.” (Col. 4, ll. 30-33).

Thus, it can be seen that *Wildenauer* describes three distinct pump with three distinct purposes – not “a pump operable to circulate water through the biomass pile by delivering water to the distribution pipe and receiving water from the drain pipe after it has traveled through the biomass pile.” Additionally, Applicants are unaware of a disclosure of this feature in any of the other applied references. For at least these reasons, Applicants submit that Independent Claim 1 and its dependents should be allowed. Independent Claim 12 and its dependents should be allowed for analogous reasons.

Independent Claim 1 is additionally allowable over the proposed combination of *Wildenauer*, *Dibble* or *Norlund*, and *Taylor* because the proposed combination would render *Wildenauer* “unsatisfactory for its intended purpose.”¹ Clearly, one would not be motivated to combine references in a manner that would make the references unsatisfactory for their intended purpose. Accordingly, there is no suggestion or motivation to make the proposed combination.

First, the Office Action asserts that it would have been obvious to combine *Taylor*’s lime slurry input device with *Wildenauer*. However, this proposed combination would render inoperable *Wildenauer*’s ability to remove liquid flow-off 11 from trough 21. Specifically, *Taylor* describes a conduit, which serves a two-fold purpose: (1) as an evacuator to withdraw fluid, and (2) as an injector to inject fluid to the pile. With reference to FIGURE 2, *Taylor*’s conduits moves vertically with the pile. The vertical offset of the *Taylor*’s conduit would render inoperable *Wildenauer*’s ability to remove liquid flow-off 11. That is, for example,

¹ See MPEP 2143.01 (“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

with the *Taylor's* conduit in a vertical position, liquid flow off from the pile could not be captured as *Wildenauer's* system is designed to do. Additionally, it is unclear how the use of *Taylor's* conduit with this two-fold purpose could be combined with any reference in which there is alleged disclosure of a "drain pipe disposed with the gravel layer." That is, *Taylor's* drain pipe, the conduit, is always vertically offset with the pile and could not be disposed within a gravel layer.

In the alternative, if the PTO argues that it is only borrowing a portion of *Taylor's* disclosure (namely, only the injector feature and not the extractor feature), Applicants remind the PTO that "[i]t is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *In re Hedges*, 783 F.2d 1038, 1041, 228 USPQ 685, 687 (Fed. Cir. 1986) (emphasis added). Rather, "the prior art as a whole must be considered. The teachings are to be viewed as they would have been viewed by one of ordinary skill." *Id.* (emphasis added).

Second, the PTO suggests combining either *Dibble* or *Norlund's* pipes to *Wildenauer*. However, this proposed combination would render inoperable *Wildenauer's* ability to wash water soluble organic substances and soluble heavy metal salts out of the refuse in the tower 1 and collect liquid flow-off therefrom after the liquid has served its purpose. *See e.g., Wildenauer* at Col. 4, ll 1-5. With regards to *Norlund*, a main pipe 1 is disclosed which is connected to an air supply. This main pipe serves a purpose of blowing air into a pile as opposed to receiving liquid. Thus, if *Norlund's* main pipe were used, *Wildenauer* could no longer collect liquid flow-off.

With regards to *Dibble*, a water removal means is described for use in a sludge dewatering process. Specifically, *Dibble* describes a vacuum that can be applied to speed up dewatering of a sludge. In other words, *Dibble* removes water of a sludge (*Dibble* does not want the water in the pile) whereas *Wildenauer* applies liquid to an organic waste (*Wildenauer* wants fluid in the pile) and simply collects the applied fluid after it has served its useful purpose. Accordingly, *Dibble's* forceful water removal process (as opposed to a collection process of *Wildenauer*) would inhibit *Wildenauer's* purpose of washing water soluble organic substances and soluble heavy metal salts out of the refuse in the tower.

For at least the above additional reasons, Applicants submit that Independent Claim 1 and its dependents should be allowed. Independent Claim 12 and its dependents should be allowed for analogous reasons.

Notwithstanding the above reasons for allowances, Applicants submit that the claims are additionally allowable because the PTO has improperly picked features from 3, 4, 5, or 6 references to the exclusion of the teachings of remainder of such references. To this end, Applicants respectfully remind the PTO that in making a determination of obviousness, “the prior art as a whole must be considered. The teachings are to be viewed as they would have been viewed by one of ordinary skill.” *In re Hedges*, 783 F.2d 1038, 1041, 228 USPQ 685, 687 (Fed. Cir. 1986) (emphasis added). “It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *Id.*

In the Examiner’s “picking” of features from 3, 4, 5, or 6 references of the 11 references applied in Office Action, Applicants point out that each of the systems in each of the references are specifically designed for a particular purpose. For example, *Wildenauer* is directed towards a system with components that allow an aerobic action in one chamber and anaerobic reaction in another chamber. *See Wildenauer* abstract. *Dibble* is directed towards a dewatering of biosludge. *See Dibble* abstract. *Norlund* is directed towards an aeration of a compost pile. *See Norlund* abstract. *Taylor* is directed towards a system, which has a dual purpose conduit (evacuator and injector) that vertically moves with a compost pile. *See Taylor* abstract and *Taylor’s* figures. *Khan* is directed towards a trickling filter system used to treat contaminated soil and prevents its migration. *See Khan* abstract. *Young* is directed towards a reaction vessel for biologically decomposing a material. *See Young* abstract. *Lynn* is directed towards a method for converting feedlot fecal waste materials into methane and animal feed. *See Lynn* abstract. *Khoroshavin* is directed towards a microbiological processes for recultivation of industrial refuse heap. *See Khoroshavin* abstract. *Furuta* is directed towards an compost fermentation chamber. *See Furuta* abstract. *Smit* is directed towards a composting method that includes mixing cellulose containing material with manure. *See Smit* abstract. *Still* is directed towards a composting method for household rubbish. *See Still* abstract. Applicants submit that features of these eleven systems do not lend themselves in an obvious manner to being individually “picked” out for recombination without the Applicants’ disclosure in hand. Such is evident, for example, as described above with reference to difficulties in combining features of *Wildenauer*, *Dibble* or *Norlund*, and *Taylor*. For at least this additional reason, Applicants submit that Independent Claim 1 and its dependents should be allowed. Independent Claim 12 and its dependents should be allowed for analogous reasons.

Applicants additionally challenge the PTO's motivation to combine as conclusory. The question raised under 35 U.S.C. § 103 is whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. All words in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. § 2143.03 (citations omitted). In addition, even if all elements of a claim are disclosed in various prior art references, which is certainly not necessarily the case here as discussed above, the claimed invention taken as a whole still cannot be said to be obvious without some reason why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention. In particular, for Claims rejected by 3, 4, 5, or 6 references, Applicants submit that one of ordinary skill in the art would consider the references as a whole and would not be motivated to individually pick and choose only certain features defined in the claims – without Applicant's disclosure in hand.

Section 101 Rejections

Claims 1-24 were provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of Claims 1-24 of copending Application No. 10/701,409. Applicants note that Application No. 10/701,409 is no longer in force.

Request for Evidentiary Support

Should a rejection based on any of the above asserted rejections be maintained, Applicants respectfully request appropriate evidentiary support. Additionally, if the Examiner is relying upon "common knowledge" or "well known" principles to establish the rejection, Applicants request that a reference be provided in support of this position pursuant to M.P.E.P. § 2144.03. Furthermore, to the extent that the Examiner maintains any rejection based on an "Official Notice" or other information within the Examiner's personal knowledge, Applicants respectfully request that the Examiner cite a reference as documentary evidence in support of this position or provide an affidavit in accordance with M.P.E.P. § 2144.03 and 37 C.F.R. 1.104(d)(2).

No Waiver

All of Applicants' arguments are without prejudice or disclaimer. Applicants reserve the right to discuss the distinctions between the applied art and the claims in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the rejections.


CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Ryan S. Loveless, Attorney for Applicant, at the Examiner's convenience at (214) 953-6913.

Although no fees are believed due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
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